UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

VENCOR HOSPITAL CENTRAL TAMPA [1/]
Employer

and **Case No. 26-RC-8245**
(formerly 12-RC-8595) [2/]

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1625, AFL-CIO, CLC
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds: [3/]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Employer is a Delaware corporation, which is engaged in the business of providing health care services in Tampa, Florida. During the past 12 months, a representative period, the Employer has received gross revenues in excess of $250,000 and purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Florida. Accordingly, I find that the Employer is engaged in

commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time, regular part-time and pool registered nurses (RNs), including charge nurses and ET/wound care coordinator, employed by the Employer at its Central Tampa, Florida facility, excluding all office clerical employees, respiratory therapists, physical therapists, occupational therapists, speech therapists, social workers, pharmacists, dietitians, physical therapy assistants, Utilization Review Coordinators (URCs), internal case manager, infection control/employee health nurse, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date

and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food & Commercial Workers International Union, Local 1625, AFL-CIO, CLC

ELECTION NOTICES

Your attention is directed to Section 102.30 of the Board's Rules and Regulations, which provides that the Employer must the Board's official Notice of Election at least three (3) full working days before the day of the election, excluding Saturdays, Sundays, and holidays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236

(1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 26 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **March 26, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **2** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street,

N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **April 2, 2001.**

DATED at Memphis, Tennessee, this 19th day of March, 2001.

/S/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

1/ The Employer's name appears as amended at the hearing.

2/ The General Counsel issued an Order Transferring Case from Region 12 to Region 26. Pursuant to said order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically be transferred back to Region 12 and will continue as Case 12-RC-8595, except that Region 26 will retain jurisdiction with respect to issues relating to the substance of this Decision.

3/ The Employer and Petitioner filed briefs, which have been duly considered.

4/ The Petitioner seeks to represent all full-time, regular part-time and pool registered nurses (RNs), including charge nurses, employed by the Employer at its Central Tampa Hospital. The Petitioner seeks to exclude RNs employed in the following job classifications, utilization review coordinators (URCs), internal case manager, ET/wound care coordinator and infection control/employee health nurse, due to a lack of community of interest. The Employer asserts only an all-

professional employee unit is appropriate. Specifically, the Employer asserts the following full-time, regular part-time and pool employees must be included in the unit: RNs, including charge nurses; respiratory therapists; speech therapists; physical therapists; occupational therapists; pharmacists; dietitians; social workers; URCs; internal case manager; ET/wound care coordinator; infection control/employee health nurse; and physical therapy assistants. The Petitioner asserts if an all-professional unit is appropriate, rather than an RN only unit, then respiratory therapists and physical therapy assistants must not be included because they are not professional employees under Section 2(12) of the Act.

The parties stipulated the Employer is not an acute care hospital as defined in 29 CFR 103.30 (f)(2) because the average length of stay is over 30 days and over 50% of the patients are admitted for over 30 days; thus, it is not subject to the Board's Rules for appropriate bargaining units for acute care hospitals. Instead, the Employer is a long-term acute care hospital, which specializes in the care of ventilator-dependent patients as well as those patients who need complex wound care treatment, complex medical multi-system failure treatment or low tolerance rehabilitation. About 90 percent of the patients are transferred from a short term, acute-care hospital to the Employer's facility. The patients are transferred because short term, acute-care hospitals cannot be fully reimbursed by Medicare while the Employer, as a long-term, acute care hospital, is on a cost-based reimbursement system. Furthermore, the patients are too ill to be transferred to a skilled nursing center or rehabilitation center.

The Employer uses a multi-disciplinary or team approach to patient care, which it asserts, distinguishes it from short-term, acute-care hospitals. Under the multi-disciplinary approach, the knowledge and expertise of other care providers, including RNs, LPNs, respiratory therapists, pharmacists, dietitians and rehabilitation professionals are utilized to treat the complex medical problems of the patients. The Employer's Chief Executive Officer (CEO), John Watkins, asserts short-term, acute care hospitals do not utilize the multi-disciplinary team approach although they do have different disciplines, which interact with one another. But, Chief Operating Officer (COO) Carol Przybycin conceded many short-term, acute care hospitals use teams.

Watkins also testified another difference between the Employer and short-term, acute care hospitals is the short-term hospital's focus on episodic interventions of an acute illness while the Employer's patients have more complex and long-term medical problems. Since the Employer's patients have previously been in short-term, acute care facilities, it is apparent that short-term, acute care hospitals also treat these same types of patients. Other differences between short-term and long-term, acute care hospitals are the Employer's higher ratio of respiratory and rehabilitation staff to RNs and the patients' longer period of time for rehabilitation. Also, the respiratory therapists are "more involved" with the patients and have more time to wean the patients from the ventilators.

As previously stated, the Employer's CEO is John Watkins. The Director of Quality Management, Internal Case Manager, Chief Financial Officer, and

Chief Operating Officer report directly to the CEO. The Employer has a Director of Recruitment and Retention, who is an RN and Ph.D. The Recruitment Director's exclusive focus is currently on recruiting and retaining RNs but at a later date the focus will be broadened to include all professionals.

Vencor, which has 56 other long-term, acute care hospitals in the United States, owns the Employer. The Employer's facility has 102 beds on three floors. The first floor consists of the surgery department, including operating and recovery rooms; six licensed beds, which are used for overflow from the medical surgical unit on the second and third floors; administrators' offices; pharmacy; the respiratory and rehabilitation departments; and offices for the internal case manager and the URCs. The second floor contains 50 beds of the medical surgical unit. The third floor houses another 32 beds from the medical surgical area, the intensive care unit (ICU), which has six beds, and the progressive care unit (PCU), which has four rooms and eight beds. These same units, surgery, ICU, PCU and medical surgical are also located in short-term hospitals.

The Employer employs approximately 90 RNs -- 60 full-time, two part-time and 28 pool. The Employer also employs respiratory therapists -- 21 full-time, one part-time and 10 pool; physical therapists -- three full-time, one part-time and six pool; pharmacists -- three full-time and six pool; occupational therapists - two full-time and three pool; dietitians -- one full-time, one part-time and three pool; speech therapists -- one full-time and one pool; social workers -- one full-time and one pool; a full-time physical therapy assistant; two full-time URCs; a full-time infection control/employee health nurse; a full-time internal case manager;

and a full-time ET/wound care coordinator. Thus, the Employer's proposed unit has 161 employees.

The parties stipulated that all of the above job classifications, except respiratory therapists and physical therapy assistants, were professional employees within the meaning of Section 2(12) of the Act. As previously noted, the Employer asserts the respiratory therapists and physical therapy assistants are professionals while the Petitioner disagrees.

All employees, except the infection control/employee health nurse, the internal case manager, URCs and the Director of Social Services, a non-supervisor, are hourly paid. All full-time and part-time employees receive the same fringe benefits -- health insurance, vacations and holidays, while pool employees do not receive any benefits (although they usually receive a higher wage rate). The same employee handbook covers all employees.

The surgery department is normally open from 7:30 a.m. to 4:00 p.m., Monday through Friday. This department handles necessary surgeries for current patients, outpatient surgery and surgeries, which require short term stays of one to three days. The in-patient surgeries are primarily cosmetic, pain management, endoscopy procedures and amputations. The RNs assigned to surgery, approximately three full-time and nine pool, do not interact with the respiratory therapists and rehabilitation therapists as much as in the medical surgical unit.

The medical surgical, ICU and PCU departments are open 24 hours a day, seven days a week. The rehabilitation department, which consists of

physical therapists, occupational therapists, speech therapists and physical therapy assistants, is open for approximately 9 hours, 7:30 a.m. to 4:30 p.m., seven days a week.

RNs are required to have a two-year Associate degree in nursing from a community college, a three-year diploma from a teaching hospital (which has been phased out and is no longer available) or a Bachelor of Science in Nursing (BSN), pass a state nursing test and be licensed by the State of Florida. Of the 75 RNs, 32 have a BSN, 23 have an Associate degree and 20 have a diploma. RNs report to nursing supervisors and the Director of Nursing (currently referred to as the Nurse Executive), all of whom are statutory supervisors. The RNs work 12-hour shifts, either 7:00 a.m. to 7:00 p.m. or 7:00 p.m. to 7:00 a.m., and the nursing department operates 24 hours a day, seven days a week. Full-time and part-time RNs are paid between $16.97 and $22.69 an hour, charge nurses -- $19.44 and $27.00 an hour, and pool RNs -- $25.00 an hour. RNs do not have an office since they are continuously on the floor and in patients' rooms.

All of the RNs' time is devoted to direct patient care and all patients are provided nursing care. The degree of patient care provided by RNs varies from unit to unit. In the critical care units, ICU and PCU, RNs provide up to 75% of the patient care with the respiratory therapists providing much of the remaining patient care. Although the rehabilitation therapists will perform therapy on some ICU and PCU patients, their medical condition limits this therapy. In the medical surgical unit, RNs provide 40% of the direct patient care while respiratory therapists provide 30%, rehabilitation therapists 20% and other professionals –

10%. In the medical surgical unit, not all patients need the services of a respiratory therapist, especially short-term inpatient surgery patients.

RNs provide all the necessary nursing functions for their patients, including an initial comprehensive medical assessment, “from head to toe”, of each patient upon admission. The respiratory therapists, rehabilitation therapists and dietitians in making their assessments utilize information from the medical assessment.

RNs regularly interact with respiratory therapists since each provides patient care. RNs also have daily interaction with physical therapists, occupational therapists and speech therapists when the therapists go to the patients’ rooms. At that time, those therapists ask a RN and a respiratory therapist about the patient’s condition and whether the patient can have therapy that day. Also, an RN and respiratory therapist usually remain with the patient for physical and occupational therapy. Additionally, RNs have interaction with social workers concerning discharge planning.

Respiratory therapists are divided into two types, registered respiratory therapist (RRT) and certified respiratory therapist tech (CRTT). A RRT has a two-year Associate degree in Applied Sciences and must pass a test administered by the State of Florida. A CRTT has a one-year certificate from an applied science program for respiratory therapy. A majority of the Employer's respiratory therapists are RRTs. The CRTT will cease to exist as of 2002, per state law. The respiratory therapists have offices on the first floor but they do not spend much time there. Respiratory therapists report to the Director of

Respiratory Therapy and to respiratory supervisors, all of whom are statutory supervisors. Full-time and part-time respiratory therapists earn between $15.91 and $18.62 an hour while the pool employees earn between $ 16.00 and $18.97 an hour. They work 12-hour shifts, either 7:00 a.m. to 7:00 p.m. or vice versa.

Respiratory therapists are responsible for the management of patients' airways and in so doing make an assessment of the respiratory system of ventilator dependent patients. This assessment includes checking to see if the patient is alert, checking the ventilator machine settings, observing oxygen saturation and listening to the patient's breathing sounds. Their duties include breathing treatments, which require medication; checking ventilator machines; inducing sputum; performing arterial blood gases; responding to ventilator alarms; and performing various aspects of trach tube care. RNs also perform these duties, except checking ventilator machines and performing arterial blood gases.

The Employer argues respiratory therapists are professional employees but concedes there is no caselaw to support its position. In asserting the respiratory therapists are professional employees, the Employer claims their work is intellectual because they make independent judgments relating to the life or death of patients. The Petitioner asserts respiratory therapists are technical employees.

Physical therapists are required to possess a Bachelor's degree in Physical Therapy, occupational therapists -- a Bachelor's degree in Occupational Therapy and speech therapists -- a Master's degree in Speech Therapy plus a

clinical fellowship. Physical therapy assistants are required to have a two-year Associate's degree. All are required to be licensed by the State of Florida. Their hourly wage ranges are-- physical therapists -- $24.59 to $36.00; occupational therapists -- $31.69 to $36.00; speech therapists -- $25.82 to $36.00 and physical therapy assistant (a pool employee) -- $32.00. All report to a rehabilitation supervisor and Sandy Evans, the Director of Rehabilitation Services, both of whom are statutory supervisors. All work 8-hour day shifts. The rehabilitation department has offices on the first floor, which consist of a physical therapy gym, a work area and treatment room for physical therapists, where they perform traction, ultrasound and electrical scan for patients with pain, a daily living area for use by the occupational and physical therapists and a speech therapy room. Despite this extensive work area, Evans testified 90 to 95% of their work occurs in the patients' rooms.

All three types of therapists, physical, occupational and speech, evaluate and perform assessments on patients and develop care plans for patients. The physical therapist's assessment focuses on the patient's range of motion, strength and balance. She conducts therapy on the patients, usually in their rooms, as long as the RN and respiratory therapist believe they can tolerate the therapy. The occupational therapist's assessment concerns her evaluation of the patient's ability to conduct daily living activities and thereafter handle appropriate therapy. The speech therapist's assessment focuses on a patient's ability to swallow and communicate. Each of the three therapists interact, at least once a day, with RNs and respiratory therapists concerning the patient's ability to

conduct therapy and on many occasions the RNs and respiratory therapists remain in the room during therapy.

The physical therapy assistant does not evaluate or assess patients nor develop care plans; rather, he implements a care plan developed by a physical therapist. The physical therapy assistant interacts with RNs and respiratory therapists in much the same manner as physical therapists. The physical therapy assistant performs therapy under the direction of a physical therapist, meaning in the presence of the physical therapist or with one present in the building, transports patients and repairs wheelchairs. The Employer asserts the physical therapy assistant is a professional employee within the meaning of Section 2(12) of the Act. This assertion is based upon the fact that the physical therapy assistant must use "the judgment and critical thinking" in providing therapy to the patients.

Social workers are required to possess a Bachelor's degree in Social Work. The two social workers report to Alice Cummings, the Director of Case Management. They share an office, with the URCs, on the first floor, where they spend about 40% of their time with the remaining 60% on the floor. Their hours are about 7:30 a.m. to 4:30 p.m. Their pay is between $18 to $23 an hour. Social workers do not provide direct patient care; rather they provide psychosocial assessments and coordinate discharge planning as well as withdrawal of life support. Social workers interact with RNs, if a patient has suicidal thoughts or other psychosocial issues, and with respiratory, physical and speech therapists concerning discharge planning.

The pharmacists must be graduates of pharmacy school and licensed by the State of Florida. They have an office on the first floor, where they dispense medications. The pharmacists report to the Director of Pharmacy. The pharmacy is open from 7:00 a.m. to 10:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday and Sunday. Their hourly wage range is $31.00 to $32.89.

Dieticians are required to have a Bachelor's degree in nutrition and be licensed by the state of Florida. They report to the Chief Operating Officer, Carol Przybycin, and earn between $19.00 and $22.66 an hour. The dieticians share an office on the first floor with the ET/wound care coordinator. They assess and evaluate the nutritional status of patients and plan nutritional treatment.

According to the job description, utilization review coordinators (URCs) are only required to be an LPN, however, an RN is preferred. However, Cummings, their supervisor as Director of Case Management, testified the requirement had changed and as of the date of her testimony, URCs must be an RN. The two current URCs are RNs. The URCs share an office with the social workers, where they spend about 40% of their time determining whether the correct amount of resources and services are being utilized, with the remaining 60% at the nurses' stations reviewing charts and other paperwork and interacting with RNs. The URCs do not provide direct patient care. At the interdisciplinary conferences, a URC acts as the facilitator. They work from 8:00 a.m. to 5:00 p.m., Monday through Friday, and are paid between $21.50 and $24.00 an hour.

The internal care manager is currently an RN although a respiratory therapist or social worker could fill the position. The internal case manager reports to CEO Watkins. This individual acts as a liaison between referring hospitals or doctors and the Employer's facility. Specifically, the case manager assesses whether a potential patient is a viable candidate for the Employer's facility. The internal case manager does not interact with patients or provide direct patient care. Furthermore, this individual does not regularly interact with other facility employees. As previously stated, the internal case manager is a salaried employee with an effective hourly wage range of $20.92 to $24.00.

The ET/wound care coordinator is required to have a BSN degree, be licensed as an RN, certified as an enterostomal therapy nurse and hold a BLS certification. The ET/wound care coordinator reports to the Nurse Executive (Director of Nursing). This individual has an office on the second floor, which she shares with the dietitian. The ET/wound care coordinator evaluates and assesses every patient for skin integrity and wounds and develops and implements a plan of care. This individual provides some direct patient care, such as obtaining cultures of wounds and applying specialty dressing. The ET/wound care coordinator spends 10 to 15% of her time in the office, gathering and calculating statistical data, with remainder of her time on the floor interacting with patients, RNs and other professionals. Her hours are 7:00 a.m. to 4:30 p.m., Monday through Friday, plus being available by beeper as a resource person 24 hours a day. She is paid between $25.46 and $27.81 an hour.

The infection control/employee health nurse is an RN with a BSN degree. She reports to the Director of Quality Risk Management and has an office in a building outside the main building. Her job duties are divided -- 70% concerning infection control and 30% concerning employee health. As previously stated, the infection control/employee health nurse is a salaried employee, whose effective hourly wage is between $25.53 and $27.09 an hour. Her hours are 7:30 a.m. to 5:00 p.m. Monday through Friday. Her infection control duties include evaluating the needs and the length of treatment and educating staff, patients and families concerning infection control but not including direct patient care. As for the employee health duties, they include in-service training. The infection control/employee health nurse interacts with RNs, other professionals, such as pharmacists, dietitians and the ET/wound care nurse, and patients on a daily basis.

The Employer holds twice weekly interdisciplinary care conferences, which are attended by RNs; respiratory therapists; a representative of the rehabilitation department, usually the Director, Sandy Evans; infection control/employee health nurse; ET/wound care nurse; a URC; and the Director of Case Management, Alice Cummings.

In determining an appropriate unit in a non-acute care hospital, I must apply a “pragmatic or empirical community of interests” analysis, wherein the normal factors are considered -- the similarity of duties and skills, wages, benefits and working conditions, extent of interaction and interchange, organizational structure, functional integration of the business, history of collective bargaining

and the scope of the petitioned-for unit – and “those factors considered relevant by the Board in its rulemaking proceedings, the evidence presented during rulemaking with respect to units in acute-care hospitals, as well as prior cases involving either the type of unit sought or the particular type of health-care facility in dispute". **Park Manor Care Center, Inc**., 305 NLRB 872, 875 (1991).

Thus, I will apply such analysis to determine whether the RN only unit is an appropriate unit or whether the only appropriate unit is an all professional unit. In reaching such a determination, I must first determine who is a professional employee. As previously stated, the Employer asserts respiratory therapists and physical therapy assistants are professional employees while the petitioner argues they are technical employees. The Board has consistently found respiratory therapists are not professional employees. **Samaritan Health Services**, 238 NLRB 629, 638 (1978); **Barnert Memorial Hospital Center**, 217 NLRB 775,779 (1975); Board's Rulemaking for the Health Care Industry, 53 Fed. Reg. 33912. The Employer concedes there is no caselaw in support of its proposition that respiratory therapists are professional employees. Consistent with established caselaw, I find respiratory therapists are not professional employees.

Concerning the physical therapy assistant, the Board has consistently found this position to be a technical employee, not a professional employee. **Trinity Memorial Hospital of Cudahy**, 219 NLRB 215, 216 (1975). The Employer concedes the Board generally finds physical therapy assistants to be technical employees and did not cite any caselaw in support of its assertion that

they are professional employees. Consistent with established caselaw, I find the physical therapy assistant is not a professional employee. Thus, in considering the Employer's assertion that an all professional unit is the only appropriate unit, I will not compare RNs or other professional employees and respiratory therapists and the physical therapy assistant.

In performing a community of interests analysis, I will first discuss whether RNs and other professional employees have similar duties and skills. The RNs are in charge of the nursing care for the patients. As such, the RNs do not focus on any one aspect of care. On the other hand, the other professional employees focus on one particular aspect of patient care. Thus, the physical therapists focus on the patients' motor skills, the occupational therapist on the patients' daily living skills, the speech therapist on the patients' swallowing and communication skills, the dietitian on the patients' nutrition, the pharmacists on the patients' medication and the social worker on the patients' psychosocial care.

In rulemaking, the Board stated:

> [W}hereas other professionals specialize, and have intermediate contact with patients, nurses are unique. Nursing practice involves the nursing process by which nurses assess patients, as reflected in the nursing practice acts. RNs continually monitor all patients to be sure that physicians' orders are being carried out and that procedures are not proving harmful. RNs must be alert for errors by other professionals; for example, if another professional, e.g. a pharmacist, dispenses medication in an improper dosage, the overall responsibility rests with the RN who, if she administers it, is also responsible. The RNs' special responsibility is based on a cluster of knowledge which they possess, as opposed to a single skill.
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> 53 Fed. Reg. 33911, 284 NLRB 1528 at 1543.

In **Mercy Hospitals of Sacramento**, 217 NLRB 765,767 (1975), a leading Board decision prior to the rulemaking, the Board stated:

> The primary and indeed overriding responsibility of registered nurses is to maintain the best possible patient care... Their duties and responsibilities with respect to patient care cannot by law and licensure be delegated to any other employees, including other professionals, and must therefore be performed exclusively by registered nurses. Apparently the recognition of this unique degree of professional responsibility, the joint committee on accreditation of hospitals, as well as the laws of several states, requires all member hospitals to maintain a separately administered department of nursing, under the direction of a director of nursing, for the purpose of establishing and measuring all departmental regulations and qualifications.

The Employer asserts that other employees collectively provide more patient care than RNs. In the medical surgical unit, this is a correct statement but RNs, as a single group, still provide at least twice as much patient care as any other single group of professionals. Furthermore, professionals could be providing direct patient care without interacting with the RNs.

Another factor to consider is the education and licensing of the RNs and professionals. Concerning education, there are many similarities in that the professional employees, except for the pharmacist and speech therapist, have a Bachelor of Science degree while the RNs have either a Bachelor of Science, a diploma from a three-year program or an Associates degree. The pharmacist and speech therapist have a higher level of education, namely a graduate degree. But, the licensing requirements are different. Specifically, the Board stated the following in the rulemaking process:

> RNs' licensing requirements may actually conflict with the requirements and practices of other professions. For example, RNs fill out incident reports on mistakes in medication dosages made by other workers. This type of responsibility may result in antagonism between the RNs and other professionals which might impede collective bargaining by the professionals as a group.
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> 53 Fed. Reg. 33912, 284 NLRB at 1544-1545.

As for the organizational structure, a RN must supervise the RNs, by law. Thus, the RNs report to nursing supervisors, who are RNs, and the Nurse Executive (formerly referred to as Director of Nursing), a RN. The Director of the Rehabilitation Department supervises the physical therapists, occupational therapists and speech therapists. The pharmacists report to the Director of Pharmacy, the dietitians report of the Chief Operating Officer and the social workers to the Director of Case Management. Thus, the RNs report to different supervisors than the other professional employees.

The next factor to consider is whether the RNs and professionals have similar wages, benefits and working conditions. The record evidence reflects the following for wages:

RNs – fulltime and regular part time (52)	$16.97 to $23.66 an hour
RNs – pool (28)	$23.50 to $25.00 an hour
Charge RNs (10)	$19.44 to $27.00 an hour
Physical therapists (10)	$24.59 to $36.00 an hour
Occupational therapists (5)	$31.69 to $36.00 an hour
Speech therapists (2)	$25.82 to $36.00 an hour
Social workers (2)	$18.00 to $23.00 an hour
Pharmacists (9)	$31.00 to $32.89 an hour
Dietitians	$19.00 to $22.66 an hour

Thus, the record evidence reflects the full-time and part-time RNs are paid about the same as the dietitians and social workers but substantially less than the physical, occupational and speech therapists and pharmacists. In the rulemaking process, the Board stated the following about RNs' wages:

> The labor market for nurses is distinct from that for other professionals. Thus, nurse salaries are low, even within the framework of hospital

> compensation. There is no pressure from outside the hospital industry forcing up wages, as for example is the case was pharmacist…. When nurses and employers bargain about wages, they look to wages of RNs at other hospitals, not wages of other professionals. Finally, nurse career ladders are very short in terms of pay, quickly leveling out after relatively brief experience. Hospitals recognize the separate RN market by having nurse recruiters; no similar position exists for other professionals.
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> 53 Fed. Reg. 33912, supra.

As for benefits, all full-time and part-time employees, except pool employees, have the same benefits. Concerning professional employees working conditions, only the RNs work 12-hour shifts, have no office and are on duty as a group 24 hours a day, 7 days a week. The Board, in its rulemaking, cited their different work schedule in support of the RNs being a separate appropriate unit. 53 Fed. Reg. 33911, supra.

There is a total lack of interchange, either permanent or temporary, between RNs and other professional employees. Obviously, this is caused by various state practice acts which dictate what duties RNs and other professionals may and may not perform as well as licensing requirements. But, there is recurring interaction between the RNs and the other professional employees. The interaction takes place when the rehabilitation employees perform therapy on patients and when the professional employees inquire about the RNs' assessment, evaluation of patients, the twice-weekly interdisciplinary care conferences and the multidisciplinary team approach.

Although the Employer testified to the uniqueness of its multidisciplinary team approach, the Board stated in rulemaking:

> In arguing that hospital workforces have moved away from a traditional structure, the industry relies heavily on the team concept, claiming that its use has resulted in greater integration among employees requiring integration of

units. However, the team concept dates back many years in this industry. Hospital representatives relied on the existence of teams in their unsuccessful attempt to defeat the 1974 amendments.

The evidence does not support the industry's claim that participation on teams changes the employee's role. Collaboration among employees is not new. For example, one of the most common teams is discharge planning which historically involves nursing and social work. But the team approach does not alter each licensed professional's responsibilities or scope of practice…. Nor does participation on a team affect employee's wages, hours of work, employment benefits, qualifications, training, skills, job functions, or history of bargaining.

53 Fed. Reg. 33907, 284 NLRB at 1537-1539.

The last specific factor to review in the empirical community of interests test is the history of representation and collective bargaining. At the Employer's facility in Tampa, there is no history of representation and collective bargaining. However, during the health-care rulemaking, the Board reviewed this factor. Specifically, the Board stated:

RNs have for many years exhibited a strong desire for separate representation… The testimony shows that not only have the RNs desired separate representation, but other professionals do not appear to react favorably to their inclusion with RNs…[O]ther professionals often do not participate in the organizing campaigns and are hostile to being included in bargaining units with RNs.

The main concern of the non-nursing professionals is of being overwhelmed by the large number of nurses and not having their concerns given priority. RNs are the largest professional group in any hospital. In fact, RNs constitute approximately 23 % of the hospital workforce. They may outnumber other professionals by ratio of 4 to 1 or more. The non-nurse professionals are also concerned that RNs could ignore their interests when they conflict with RNs'.

There were a number of issues of unique concern to nurses in collective bargaining. While there may be examples of how special concerns of the RNs have been addressed in all professional units, this does not necessarily demonstrate that RNs and other professionals have large numbers of common interest. Nurses can emphasize these issues in bargaining regardless of the

concerns of non-RN professionals because RNs would constitute 80 % or more in a typical unit, and often 100 % of those willing to participate in bargaining.

For example, RNs alone have recurring concerns with respect to floating, i.e. being temporarily transferred from one unit to another to cover understaffed units. RNs have bargained for mandatory orientation both in their own unit and before floating to other units… Floating and orientation generally do not concern other hospital professionals since they typically are not required to float to areas where they may be unqualified. Moreover, other hospital professionals are not as concerned with staffing in general because they do not have constant patient care responsibilities like the RNs and because they are not in critically short supply. The evidence shows that scheduling issues are of much greater concern to RNs than to other non-nursing professionals. RNs are virtually alone in their concerns with respect to mandatory overtime and double or rotating shifts, or evening, night and weekend shifts, all of which are said to increase the likelihood of nurse error. There were only isolated examples of non-nurse professionals working late shifts or weekends. Many other professionals, like social workers, work primarily day shifts during the weekdays.

53 Fed Reg. 33914-33915, 284 NLRB at 1547-1550.

In the case at bar, the ratio of RNs to other professional employees is not the four to one ratio discussed by the Board in its rulemaking; rather it is about three to one. Still, if an all professional unit were deemed the only appropriate unit, then RNs would dominate the unit, possibly to the detriment of other professional employees.

The Employer asserts the Board's exclusion of nursing homes, specialty hospitals, such as psychiatric hospitals, and rehabilitation hospitals from the rulemaking process supports its position that an all professional unit is the only appropriate unit. This assertion is totally unsupported by the record. Clearly, the Employer's facility is totally unlike a nursing home or specialty hospital. The Employer acknowledged that it was an acute care hospital, which based on its length of patient stay, was not covered by the Board's Health Care Rules. The Board in its rulemaking process differentiated between rehabilitation facilities and

acute-care hospitals. In an acute care hospital, typically the RNs are scheduled around the clock. However, in rehabilitation hospitals other professionals may also be called upon to provide services in the evening and on weekends. It was noted that “RNs and other employee classifications function somewhat differently because patients are not as acutely sick as in other types of hospitals, and because different methods of treatment appear required for rehabilitative care; and around-the- clock efforts may be more extensively required of all professional groups and perhaps other employees as well." 53 Fed Reg. 16343, 284 NLRB 1580, 1591. In the case *sub judice*, the Employer's patients are as acutely sick as in short term acute-care hospitals; thus, the distinction between rehabilitation and short-term acute-care hospitals is not present in this situation.

The Employer asserts three previous elections have been held at hospitals owned by Vencor and in each of these elections, the unit was all professionals. The Employer concedes each of these elections was pursuant to a stipulated election agreement. It is well-established that stipulated election agreements are not controlling in determining the appropriateness of a unit.

Both parties cited the three Board decisions, post-rulemaking, concerning RN units at non-acute care hospitals -- **McLean Hospital Corp**., 311 NLRB 1100 (1993); **Holliswood Hospital**, 312 NLRB 1185 (1993); and **Charter Hospital of Orlando South**, 313 NLRB 951 (1994). In each of these cases, the Board found the petitioned-for RN unit was an appropriate unit, instead of the employer’s proposed all professional employees unit. Although these psychiatric hospitals are distinguishable in some ways from the Employer’s facility, the psychiatric

hospitals made many of the same arguments, such as its use of multidisciplinary teams and more interaction between employees, to support its position that only an all professional employee unit was appropriate. In each case, the Board rejected those arguments.

Based on the foregoing analysis, and applying the empirical community of interests test set forth in **Park Manor Care Center**, supra, I find a separate unit of RNs is an appropriate unit. In so finding, I rely on the above noted distinctions between RNs and other professional employees, including the fact that RNs perform different duties with different skills; provide the most patient care of any professionals; have different licensing requirements; have separate supervision, as required by law; are paid lower wages than most other professional employees; work different schedules; and do not interchange with other professional employees. Furthermore, the history of representation and collective bargaining within hospitals supports a RN unit as an appropriate unit and the employer's utilization of multidisciplinary care teams is not unique, as determined in the health-care rulemaking.

Based upon this finding, the only remaining issue is whether the RNs who are employed as the infection control/employee health nurse, ET/wound care coordinator, and internal case manager and URCs share a community of interests with the other RNs. As previously stated, the Petitioner seeks their exclusion from the unit. The record evidence establishes that of the disputed positions, only the ET/wound care coordinator provides direct patient care and assesses current patients, while the primary duties of the 90 RNs are to provide

direct patient care and regularly assess patients. Of the four job classifications, only the ET/wound care coordinator reports to the same supervisor as the RNs. All of the disputed job classifications have an office while the RNs do not have one. The internal case manager and infection control/employee health nurse are salaried employees while RNs are hourly paid. The internal case manager does not regularly interact with the RNs while the others do.

Although currently an RN holds each of the disputed positions, the job descriptions for URCs and internal case manager do not require such. Thus, a serious difficulty could occur if those two positions were included in the unit and a non-RN filled one or both of those positions.

Based on the foregoing analysis, including the above-specifically noted distinctions, I find the URCs, internal case manager and infection control/employee health nurse do not share a sufficiently substantial community of interest with the RNs; thus, I shall exclude them from the unit. Concerning the ET/wound care coordinator, I find this individual does have a sufficiently substantial community of interest with RNs because she provides direct patient care, assesses patients, regularly interacts with RNs, is paid a comparable hourly wage and reports to the same supervisor.

The size of the unit found appropriate is approximately 91 employees.

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